

DECISION



26462
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-211426

DATE: October 12, 1983

MATTER OF: CMI Corporation

DIGEST:

Contracting agency's decision to reject protester's 1 day late quotation was improper because the RFQ did not contain a late quotations provision, award had not been made, and neither substantial activity had transpired in evaluating quotations nor would other offerors have been prejudiced.

CMI Corporation (CMI) protests against the Regional Contracting Department (RCD), Naval Supply Center (NSC), Charleston, South Carolina (Navy), rejecting its quotation under request for quotations (RFQ) No. 00612-83-Q-5125, for a lease to ownership plan for rental and maintenance of various IBM computer equipment and software. The equipment appears on a nonmandatory Federal Supply Schedule.

We sustain the protest.

The RFQ was issued on March 3, 1983, to four firms and IBM and quotations were required by the close of business on March 17, 1983. IBM submitted the only timely response and award was made on April 1, 1983. CMI's quote was not considered because it was received late. CMI protests the contracting officer's determination.

CMI sent its quotation via Airborne Freight Corporation (Airborne) on March 16, 1983. CMI indicates the quote was delivered to RCD on March 17, 1983, and was accepted by an employee at 3 p.m. and that the quotation was properly addressed to the issuing office. Therefore, CMI contends that the late quote was caused by government mishandling. CMI also notes the RFQ did not contain a late proposal clause.

The Navy responds that the CMI envelope was time/date stamped on March 18, 1983, at 9:29 a.m. (EST) by the RCD mailclerk. After delivery to RCD, the CMI quotation was determined to be late. From RCD's investigation, the Airborne receipt was signed by a receiving division employee not located in the RCD.

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The Navy states that RCD is located on the second floor of the NSC. The NSC mailroom (receiving area) is located on the first floor of NSC. The RCD usually makes four mail pickups from the NSC mailroom--two pickups in the morning and two in the afternoon, the last being at 3:45 p.m. When mail is picked up from the NSC mailroom, it is brought to RCD and time/date stamped, sorted and then delivered to the addressee.

RCD theorizes that the package missed the last mail pickup on March 17 and was picked up from the receiving area on the first mailrun of March 18, which explains the time/date stamp of 9:29 a.m., March 18, 1983.

RCD first contends that since this procurement was conducted under small purchase procedures, our Office's review should be limited to cases of fraud or intentional misconduct, or where it appears that the procuring activity has not made a reasonable effort to secure price quotations from a representative number of responsible firms as anticipated by small purchase regulations. See, e.g., R.E. White supra. RCD therefore argues that despite the fact no late quotation clause was set out in the RFQ, the contracting officer's decision shows no evidence of fraud or intentional misconduct and should be sustained since a reasonable effort was made to secure competition.

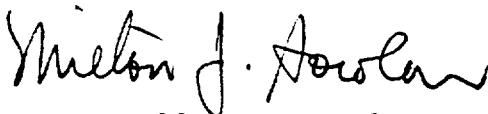
Initially, we point out that our small purchase review standard is intended to apply only to protests against the contracting agency's approach to defining the field of competition for small purchases. We limit our consideration of these types of protests because the small purchase procedures, which are designed to minimize the administrative cost that otherwise might be the equivalent of or exceed the cost of acquiring relatively inexpensive items, permit purchases without the need to maximize competition, in contrast to other procurements. However, once the field of competition is defined, the procurement must be conducted consistent with the concern for fair and equitable competition that is inherent in any procurement. R.E. White & Associates, Inc., B-205489, April 1, 1982, 82-1 CPD 214. Moreover, we do not believe this can properly be called a small purchase since the contract price of IBM was \$52,293.80.

Second, RCD notes that our Office has affirmed the contracting agency's decision to reject bids in cases where a bid or proposal was delivered by commercial carrier to the receiving area prior to the scheduled closing, but was not received in the office designated for receipt until after

opening. Future Tech, B-201601, March 1, 1983, 83-1 CPD 217; General Atomic Company, B-202165, May 27, 1981, 81-1 CPD 415. Our Office has found that a bid should not be accepted if the bidder significantly contributed to the late receipt by not acting reasonably in fulfilling its responsibility of delivering the bid to the proper place by the proper time, even though the lateness may in part be caused by erroneous Government action. Empire Mechanical Contractors, Inc., B-202141, June 9, 1981, 81-1 CPD 471. Thus, RCD argues the choice of Airborne to deliver the package to the receiving area rather than the issuing office was not the result of any misdirection by RCD. Consequently, the Government was not the paramount cause of the late quote.

Here, we find that the contracting agency should have accepted the late quotations. Our Office has found that a request for quotations by a certain day and time, without a late quotations provision, reasonably cannot be construed as establishing a firm closing deadline for the receipt of proposals. Rather, the contracting agency has merely indicated to offerors when the award is anticipated to be made--the close of business March 17. By not establishing a definite timeframe, the contracting agency is not precluded from considering a quotation received prior to award, if no substantial activity has transpired in evaluating quotations or prejudice occurred to the other competing offerors. See Visions, Ltd. d/b/a Visions Paratechnical, B-210104, May 17, 1983, 83-1 CPD 525; R.S. Bowers Construction Company, B-208164, November 29, 1982, 82-2 CPD 482. Since these facts were not present, we find that CMI's quotation should not have been rejected.

Since the Navy ordered the IBM equipment on April 1, 1983, under a lease to ownership plan, it is impracticable for our Office to recommend any corrective action. Nevertheless, by letter of today we are advising the Secretary of the Navy of the conduct in this procurement so that in the future the practice in this procurement may be avoided.

for 
Comptroller General
of the United States